

# INTRODUCED BILLS AND JOINT RESOLUTIONS ON JANUARY 14, 2003

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 161

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Protection from Violent Programming Act".

## SEC. 2. FINDINGS.

The Congress makes the following findings:

- (1) Television influences children's perception of the values and behavior that are common and acceptable in society.

- (2) Broadcast television, cable television, and video programming are—

- (A) uniquely pervasive presences in the lives of all American children; and

- (B) readily accessible to all American children.

- (3) Violent video programming influences children, as does indecent programming.

- (4) There is empirical evidence that children exposed to violent video programming at a young age have a higher tendency to engage in violent and aggressive behavior later in life than those children not so exposed.

- (5) There is empirical evidence that children exposed to violent video programming have a greater tendency to assume that acts of violence are acceptable behavior and therefore to imitate such behavior.

- (6) There is empirical evidence that children exposed to violent video programming have an increased fear of becoming a victim of violence, resulting in increased self-protective behaviors and increased mistrust of others.

- (7) There is a compelling governmental interest in limiting the negative influences of violent video programming on children.

- (8) There is a compelling governmental interest in channeling programming with violent content to periods of the day when children are not likely to comprise a substantial portion of the television audience.

- (9) A significant amount of violent programming that is readily accessible to minors remains unrated specifically for violence and therefore cannot be blocked solely on the basis of its violent content.

- (10) Age-based ratings that do not include content rating for violence do not allow parents to block programming based solely on violent content thereby rendering ineffective any technology-based blocking mechanism designed to limit violent video programming.

- (11) The most recent study of the television ratings system by the Kaiser Family Foundation concludes that 79 percent of violent programming is not specifically rated for violence.

- (12) Technology-based solutions, such as the V-chip, may be helpful in protecting some children, but cannot achieve the compelling governmental interest in protecting all children from violent programming when parents are only able to block programming that has, in fact, been rated for violence.

- (13) Restricting the hours when violent programming can be shown protects the interests of children whose parents are unavailable, unable to supervise their children's viewing behavior, do not have the benefit of technology-based solutions, are unable to afford the costs of technology-based solutions, or are unable to determine the content of those shows that are only subject to age-based ratings.

- (14) After further study, pursuant to a rulemaking, the Federal Communications Commission may conclude that content-based ratings and blocking technology do not effectively protect children from the harm of violent video programming.

- (15) If the Federal Communications Commission reaches the conclusion described in paragraph (14), the channeling of violent video programming will be the least restrictive means of limiting the exposure of children to the harmful influences of violent video programming.

## SEC. 3. ASSESSMENT OF EFFECTIVENESS OF CURRENT RATING SYSTEM FOR VIOLENCE AND EFFECTIVENESS OF V-CHIP IN BLOCKING VIOLENT PROGRAMMING.

(a) REPORT.—The Federal Communications Commission shall—

- (1) assess the effectiveness of measures to require television broadcasters and multichannel video programming distributors (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)) to rate and encode programming that could be blocked by parents using the V-chip undertaken under section 715 of the Communications Act of 1934 (47 U.S.C. 715) and under subsections (w) and (x) of section 303 of that Act (47 U.S.C. 303(w) and (x)) in accomplishing the purposes for which they were enacted; and

- (2) report its findings to the Committee on Commerce, Science, and Transportation of the United States Senate and the Committee on Commerce of the United States House of Representatives, within 12 months after the date of enactment of this Act, and annually thereafter.

(b) ACTION.—If the Commission finds at any time, as a result of its ongoing assessment under subsection (a), that the measures referred to in subsection (a)(1) are insufficiently effective, then the Commission shall complete a rulemaking within 270 days after the date on which the Commission makes that finding to prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience.

(c) DEFINITIONS.—Any term used in this section that is defined in section 715 of the Communications Act of 1934 (47 U.S.C. 715), or in regulations under that section, has the same meaning as when used in that section or in those regulations.

## SEC. 4. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING THAT IS NOT SPECIFICALLY RATED FOR VIOLENCE AND THEREFORE IS NOT BLOCKABLE.

Title VII of the Communications Act of 1934 (47 U.S.C. 701 et seq.) is amended by adding at the end the following:

### "SEC. 715. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING NOT SPECIFICALLY BLOCKABLE BY ELECTRONIC MEANS.

"(a) UNLAWFUL DISTRIBUTION.—It shall be unlawful for any person to distribute to the public any violent video programming not blockable by electronic means specifically on the basis of its violent content during hours when children are reasonably likely to comprise a substantial portion of the audience.

"(b) RULEMAKING PROCEEDING.—The Commission shall conduct a rulemaking proceeding to implement the provisions of this section and shall promulgate final regulations pursuant to that proceeding not later than 9 months after the date of enactment of the Children's Protection from Violent Programming Act. As part of that proceeding, the Commission—

"(1) may exempt from the prohibition under subsection (a) programming (including

news programs and sporting events) whose distribution does not conflict with the objective of protecting children from the negative influences of violent video programming, as that objective is reflected in the findings in section 551(a) of the Telecommunications Act of 1996;

"(2) shall exempt premium and pay-per-view cable programming and premium and pay-per-view direct-to-home satellite programming; and

"(3) shall define the term 'hours when children are reasonably likely to comprise a substantial portion of the audience' and the term 'violent video programming'.

"(c) ENFORCEMENT.—

"(1) FORFEITURE PENALTY.—The Commission shall impose a forfeiture penalty of not more than \$25,000 on any person who violates this section or any regulation promulgated under it for each such violation. For purposes of this paragraph, each day on which such a violation occurs is a separate violation.

"(2) LICENSE REVOCATION.—If a person repeatedly violates this section or any regulation promulgated under this section, the Commission shall, after notice and opportunity for hearing, revoke any license issued to that person under this Act.

"(3) LICENSE RENEWALS.—The Commission shall consider, among the elements in its review of an application for renewal of a license under this Act, whether the licensee has complied with this section and the regulations promulgated under this section.

"(d) DEFINITIONS.—For purposes of this section—

"(1) BLOCKABLE BY ELECTRONIC MEANS.—The term 'blockable by electronic means' means blockable by the feature described in section 303(x).

"(2) DISTRIBUTE.—The term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, but it does not include the transmission, retransmission, or receipt of any voice, data, graphics, or video telecommunications accessed through an interactive computer service as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), which is not originated or transmitted in the ordinary course of business by a television broadcast station or multichannel video programming distributor as defined in section 602(13) of that Act (47 U.S.C. 522(13)).

"(3) VIOLENT VIDEO PROGRAMMING.—The term 'violent video programming' as defined by the Commission may include matter that is excessive or gratuitous violence within the meaning of the 1992 Broadcast Standards for the Depiction of Violence in Television Programs, December 1992."

## SEC. 5. FTC STUDY OF MARKETING STRATEGY IMPROVEMENTS.

The Federal Trade Commission shall study the marketing of violent content by the motion picture, music recording, and computer and video game industries to children, including the marketing practices improvements described by industry representatives at the hearing held by the Senate Committee on Commerce, Science, and Transportation on September 13, 2000. The Commission shall assess the extent to which these marketing practices have improved under the model of self-regulation as recommended by the Commission in its September, 2000, report, Making Violent Entertainment to Children: A Review of Self Regulation and Industry Practices in the Motion Picture, Music Recording and Electronic Game Industries. The Commission shall report the results of the study, including findings, and recommendations, if any, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on

Commerce within 18 months after the date of enactment of this Act.

#### SEC. 6. SEPARABILITY.

If any provision of this Act, or any provision of an amendment made by this Act, or the application thereof to particular persons or circumstances, is found to be unconstitutional, the remainder of this Act or that amendment, or the application thereof to other persons or circumstances shall not be affected.

#### SEC. 7. EFFECTIVE DATE.

The prohibition contained in section 715 of the Communications Act of 1934 (as added by section 2 of this Act) and the regulations promulgated thereunder shall take effect 1 year after the regulations are adopted by the Commission.

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself and Mr. DEWINE):

S. 178. A bill to amend title XVIII of the Social Security Act to provide adequate coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare program that have received an organ transplant; to the Committee on Finance.

Mr. DURBIN. Mr. President, I rise to make a few remarks concerning this bill I am introducing today with my colleague from Ohio, which will help many Medicare beneficiaries who have had organ transplants.

Last year over 4,400 people died while waiting for an organ transplant, including 257 in my home State of Illinois. Currently, over 80,000 Americans are waiting for a donor organ with 4,349 waiting in Illinois. It is this scarcity that has fueled the controversy over organ allocation.

Given that organs are extremely scarce, Federal law should not compromise the success of organ transplantation. Yet that is exactly what current Medicare policy does, because Medicare denies certain transplant patients coverage for the drugs needed to prevent rejection.

Medicare does this in several different ways. First, Medicare does not pay for anti-rejection drugs for Medicare beneficiaries, who received their transplants prior to becoming a Medicare beneficiary. So for instance, if a person received a transplant at aged 64 through their health insurance plan, when they retire and rely on Medicare for their health care they will no longer have immunosuppressive drug coverage. Transplantation is the only medical condition that Medicare treats as a pre-existing condition so as to deny a Medicare beneficiary a health care service that would otherwise be covered.

Second, Medicare only pays for anti-rejection drugs for transplants performed in a Medicare approved transplant facility. However, many beneficiaries are completely unaware of this fact and how it can jeopardize their future coverage of immunosuppressive drugs. To receive an organ transplant, a person must be very ill

and many are far too ill at the time of transplantation to be researching the intricate nuances of Medicare coverage policy.

Finally, Medicare has a special program for End Stage Renal Disease, ESRD, patients. Medicare pays for their dialysis at a cost of over \$100,000 per year and provides for all their health care costs. However, if a transplant becomes available to an ESRD patient, Medicare only provides them with health care for three years post-transplantation. The fact is, however, that they will need to use immunosuppressive drugs for the rest of their life to maintain their transplant. But after the three years are up, their entire Medicare coverage, including immunosuppressive drug coverage is terminated. If that person's transplant is rejected because they can no longer afford their immunosuppressive drugs, then Medicare will again pay for their dialysis and all of their health care costs. This is ludicrous. It would make more sense for Medicare to continue to provide them with the lifesaving immunosuppressive drugs that they need.

The bill that I am introducing today, the "Comprehensive Immunosuppressive Drug Coverage for Transplant Patients of 2000 Act" would remove these short-sighted limitations. The bill sets up a new, easy to follow policy: All Medicare beneficiaries who have had a transplant and need immunosuppressive drugs to prevent rejection of their transplant, would be covered as long as such anti-rejection drugs were needed.

I am introducing this bill on behalf of some of the constituents that I have met who are unfortunately very adversely affected by the current gaps in Medicare coverage.

Richard Hevrdejs was a Chicago attorney in private practice until 1993. Unfortunately, he suffered a debilitating heart attack that year, which left him unable to work and on disability. In 1997 suffering from congestive heart failure, he was placed on a Heart-Mate machine at the University of Illinois Medical Center, UIC. In April of 1998, he received a heart transplant at UIC but because UIC was not at the time a Medicare approved facility for heart transplants, Medicare will not cover his immunosuppressive drugs. Richard was near death when he had his transplant and was in no condition to research the intricacies of Medicare coverage policies. His drug costs are now around \$25,000 per year. He gets some assistance from the drug company medical assistance plans and he has a Medigap policy that provides a little assistance. But for the most part, he is forced to watch all his savings dwindle because of Medicare's coverage gaps.

Anita Milton was from Morris, Illinois. In 1995, she became so disabled that she was no longer able to work and was forced onto disability. The following year, he lungs gave up and she had to have a bilateral lung transplant.

Because Medicare is not available for 2 years after a person becomes eligible for disability, Anita was not on Medicare when she had the transplant. The huge bills for the transplant remained at collection agencies till her death several years ago. Because Anita was not on Medicare when she received her transplant, she did not receive Medicare coverage for the anti-rejection drugs that she needs. She received \$940 in disability payments per month. She then went on Medicaid but due to the spend down requirements in Illinois, she had to spend \$689 on drug costs to get Medicare coverage for her drugs. In effect she got coverage every second month. Anita couldn't afford her anti-rejection drugs and she tried to scale back on them. This caused her to nearly reject the transplant. Consequently, she lost a third of her lung capacity permanently. As Anita said at a Town Hall meeting in Chicago in January 1998 "these Medicare and Medicaid rules make no sense."

I am introducing this bill on the same day that another bill the "Living Donor Access Act of 2003", which I am an original cosponsor, is also being introduced by my colleague Senator DeWine. The "Living Donor Access Act" also seeks to improve the lives of transplant patients. The "Living Donor Access Act" would prohibit insurers in the group market from imposing additional premiums or preexisting condition exclusions on living organ donors. There are currently more than 25,000 living organ donors, but no law protects these individuals against discrimination in the group health insurance market. The two bills are good companions. It is important that we root out all discrimination against both those who have received transplants and those who are so generous as to donate.

I ask unanimous consent that the text of the bill, the "Comprehensive Immunosuppressive Drug Coverage for Transplant Patients of 2003", be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 178

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Immunosuppressive Drug Coverage for Transplant Patients Act of 2003".

#### SEC. 2. COMPREHENSIVE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "to an individual who receives" and all that follows before the semicolon at the end and inserting "to an individual who has received an organ transplant".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs furnished on or after the date of enactment of this Act.